

AB

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

440
ANDREW PERRONG, individually and on
behalf of a class of all persons and entities
similarly situated,

Plaintiff,

vs.

MEDICAL GUARDIAN LLC,

Defendant.

Case No.

19 2371

CLASS ACTION COMPLAINT

FILED

MAY 31 2019

KATE BARKMAN, Clerk
By _____ Dep. Clerk

CLASS ACTION COMPLAINT

Preliminary Statement

1. Plaintiff Andrew Perrong ("Plaintiff") brings this action under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, a federal statute enacted in response to widespread public outrage about the proliferation of intrusive, nuisance telemarketing practices. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).
2. Medical Guardian LLC made a series of prerecorded telemarketing calls to Mr. Perrong's residential telephone number, which is charged per call, in violation of the TCPA.
3. The Plaintiff never consented to receive the calls, which were placed to him for telemarketing purposes. Because telemarketing campaigns generally place calls to hundreds of thousands or even millions of potential customers *en masse*, the Plaintiff brings this action on behalf of a proposed nationwide class of other persons who received illegal telemarketing calls from or on behalf of Defendant.

4. A class action is the best means of obtaining redress for the Defendant's wide scale illegal telemarketing and is consistent both with the private right of action afforded by the TCPA and the fairness and efficiency goals of Rule 23 of the Federal Rules of Civil Procedure.

Parties

5. Plaintiff Andrew Perrong is a Pennsylvania resident and a resident of this district.

6. Defendant Medical Guardian LLC ("Medical Guardian") is a Pennsylvania limited liability company with its principal place of business in Philadelphia, Pennsylvania and is also a resident of this district. Defendant's registered address is 1500 Locust Street, Suite 4310, Philadelphia, Pennsylvania 19102.

Jurisdiction & Venue

7. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the Plaintiff's claims arise under federal law.

8. Medical Guardian regularly engages in business in this district, including making telemarketing calls into this district, and soliciting business from this district. Furthermore, Medical Guardian provides Pennsylvania residents with services in this district, is incorporated in this district, and has offices in this district.

9. Venue is proper under 28 U.S.C. § 1391(b)(1) because the Defendant resides in this district.

The Telephone Consumer Protection Act

10. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that "[u]nrestricted telemarketing ... can be an intrusive invasion of privacy [.]" Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

The TCPA Prohibits Automated Telemarketing Calls

11. The TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service ... or any service for which the called party is charged for the call.” *See* 47 U.S.C. § 227(b)(1)(A)(iii).

12. The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A). *See* 47 U.S.C. § 227(b)(3).

13. The TCPA also makes it unlawful “to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party.” *See* 47 U.S.C. § 227(b)(1)(B).

14. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient.

15. In 2013, the FCC required prior express written consent for all autodialed or prerecorded telemarketing calls (“robocalls”) to wireless numbers, services for which the called party is charged for the call, and residential lines. Specifically, it ordered that:

[A] consumer’s written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received “clear and conspicuous disclosure” of the consequences of providing the requested consent, i.e., that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates.[] In addition, the written agreement must be obtained “without

requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.[]”

In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

The TCPA Requires Telemarketers to Identify Themselves

16. The TCPA’s implementing regulations prohibit any company from initiating any telemarketing call unless the company has implemented internal procedures for maintaining a list of persons who request not to be called by the entity. 47 C.F.R. 64.1200(d). Such internal procedures must meet certain minimum requirements to allow the entity to initiate telemarketing calls. 47 C.F.R. 64.1200(d)(1)-(6).

17. This includes the requirement that “[a] person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity can be contacted.” 47 C.F.R. 64.1200(d)(4).

The Growing Problem of Automated Telemarketing

18. “Robocalls and telemarketing calls are currently the number one source of consumer complaints at the FCC.” Tom Wheeler, *Cutting Off Robocalls* (July 22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls> (statement of FCC chairman).

19. “The FTC receives more complaints about unwanted calls than all other complaints combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules and Regulations Implementing the Tel Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016), https://www.ftc.gov/system/files/documents/advocacy_documents/commentstaff-ftc-bureau-

consumer-protection-federal-communications-commission-rulesregulations/160616robocallscomment.pdf.

20. In fiscal year 2017, the FTC received 4,501,967 complaints about robocalls, compared with 3,401,614 in 2016. Federal Trade Commission, *FTC Releases FY 2017 National Do Not Call Registry Data Book and DNC Mini Site* (Dec. 18, 2017), <https://www.ftc.gov/news-events/press-releases/2017/12/ftc-releases-fy-2017-nationaldo-not-call-registry-data-book-dnc>.

21. *The New York Times* recently reported on the skyrocketing number of robocall complaints and widespread outrage about illegal telemarketing. Tara Siegel Bernard, *Yes, It's Bad. Robocalls, and Their Scams, Are Surging*, N.Y. Times (May 6, 2018), <https://www.nytimes.com/2018/05/06/your-money/robocalls-riseillegal.html>; see also Katherine Bindley, *Why Are There So Many Robocalls? Here's What You Can Do About Them*, Wall St. J. (July 4, 2018), <https://www.wsj.com/articles/why-there-are-so-manyrobocalls-heres-what-you-can-do-about-them-1530610203>.

22. Industry data shows that the number of robocalls made each month increased from 831 million in September 2015 to 4.7 billion in December 2018—a 466% increase in three years.

23. According to online robocall tracking service “YouMail,” 5.2 billion robocalls were placed in March 2019 at a rate of 168.8 million per day. www.robocallindex.com (last visited May 3, 2019). YouMail estimates that 2019 robocall totals will exceed 60 billion. See *id.*

24. The FCC also has received an increasing number of complaints about unwanted calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC, Consumer Complaint Data Center, www.fcc.gov/consumer-help-center-data (last visited May 3, 2019).

Factual Allegations

25. Defendant Medical Guardian offers medical alert systems.

26. To generate new clients, Medical Guardian relies on telemarketing.

27. One of the telemarketing strategies used by Defendant involves the use of automated and prerecorded calls to solicit potential customers.

The Calls to Mr. Perrong

28. Plaintiff Perrong is a “person” as defined by 47 U.S.C. § 153(39).

29. Plaintiff’s telephone number is (215) 322-XXXX.

30. Plaintiff is charged for each call placed to that number.

31. That number is on the National Do Not Call Registry.

32. That number is used for residential purposes only.

33. Medical Guardian placed calls to the Plaintiff on at least 26 occasions between January 10, 2019 and May 20, 2019.

34. A prerecorded message was then played:

Hello. Press 1 Now. The first 100 callers will receive \$2,000 in grocery coupons. If you’re over the age of 55 and have had a slip and fall in the past 12 months, press 1 now to receive a medical alert device valued at \$400 at no cost to you for the equipment. Press 1 now to receive your medical alert device and \$2,000 in grocery coupons or press 3 to be removed from the marketing list. Again, press 1 now to receive your medical alert device and \$2,000 in grocery coupon savings. So press 1 now to speak to an enrollment specialist NOW!

35. The use of a prerecorded message is consistent with the use of an ATDS, as it would be illogical to manually call numbers only to then play a prerecorded message.

36. The Caller ID Number on these calls came from a (211) or (121) area code. For instance, the caller ID would display 211-625-835.

37. (211) is an emergency services area code. (121) is an invalid area code.

38. The Caller ID Number would also usually be missing a digit, making the caller ID only 9 digits in length and thus further invalid.

39. All these facts are also consistent with the use of an ATDS, as it takes computerized dialing software to manipulate a Caller ID.

40. The company was not identified in the prerecorded message, so the Plaintiff responded to speak with a live individual.

41. The live individual identified his company as “Medical First Alarm.”

42. “Medical First Alarm” does not appear to be a registered company or fictitious name in any state or jurisdiction.

43. To secure the real company name, the Plaintiff provided his credit card information during the call.

44. The Plaintiff’s purchase identified Medical Guardian LLC as the merchant.

45. The Plaintiff’s credit card company provided the following information about the transaction:

Medical Guardian LLC
Contact Telephone: 800-313-1191; 215-977-8000
City and ZIP Code: Philadelphia, PA 19103
Merchant Website: <https://www.medicalguardian.com/>

46. This information exactly matches the information on Medical Guardian’s contact us page on their website, <https://www.medicalguardian.com/contact>, archived at <https://archive.is/xDF8g>.

47. Shortly thereafter, Plaintiff received the medical alert device he had ordered. The package return address indicated Medical Guardian at 109 Rogers Road, Wilmington, DE 19801. Upon information and belief, this is Medical Guardian’s warehouse and distribution facility. Moreover, the contents of the package indicated that it came from Medical Guardian.

48. Plaintiff and the other call recipients were harmed by these calls. They were temporarily deprived of legitimate use of their phones because the phone line was tied up during the telemarketing calls and their privacy was improperly invaded. Moreover, these calls injured Plaintiff and the other call recipients because they were frustrating, obnoxious, annoying, were a nuisance, and disturbed the solitude of Plaintiff and the class.

Class Action Allegations

49. As authorized by Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, Plaintiff sues on behalf of other persons or entities throughout the United States.

50. The proposed classes are tentatively defined as:

CLASS 1

All persons within the United States: (a) to whom Medical Guardian, and/or a third party acting on its behalf, made one or more non-emergency telephone calls; (b) promoting Medical Guardian's products or services; (c) to their residential telephone number, cellular telephone number, or a number for which they are charged for the call; (d) using an artificial or prerecorded voice; and (e) at any time in the period that begins four years before the date of filing this Complaint through the date of class certification.

CLASS 2

All natural persons within the United States: (a) to whom Medical Guardian, and/or a third party acting on its behalf, made two or more calls in a twelve-month period; (b) promoting Medical Guardian products or services; (c) using a prerecorded voice that did not identify the company that was calling, or whose goods or services were being promoted; (d) at any time in the period that begins four years before the date of the filing of this Complaint to trial.

51. The Plaintiff is a member of the classes.

52. Excluded from the classes are the Defendant, any entities in which the Defendant has a controlling interest, the Defendant's agents and employees, any judge to whom this action is assigned, and any member of the judge's staff and immediate family.

53. Class members are identifiable through phone records and phone number databases that will be obtained through discovery.

54. The potential class members number at least in the thousands. Individual joinder of these persons is impracticable.

55. There are questions of law and fact common to Plaintiff and the proposed classes, including:

- a. Whether the Defendant was properly identified in the prerecorded message it sent;
- b. Whether the Defendant placed telemarketing calls without obtaining the recipients' valid prior express written consent;
- c. Whether the Defendant's TCPA violations were negligent, willful, or knowing; and
- d. Whether the Plaintiff and the class members are entitled to statutory damages because of the Defendant's actions.

56. Plaintiff's claims are based on the same facts and legal theories as class members and therefore are typical of the class members' claims.

57. Plaintiff is an adequate representative of the classes because his interests do not conflict with the classes' interests, he will fairly and adequately protect the classes' interests, and he is represented by counsel skilled and experienced in litigating TCPA class actions.

58. The Defendant's actions are applicable to the classes and to Plaintiff.

59. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class

members, which will be ascertainable from records and databases maintained by Defendant and others.

60. The likelihood that individual class members will prosecute separate actions is remote due to the time and expense necessary to prosecute an individual case given the small recoveries available through individual actions.

Legal Claims

Count One: Violations of the TCPA, 47 U.S.C. § 227(b)

61. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

62. The foregoing acts and omissions of Medical Guardian and/or its affiliates, agents, and/or other persons or entities acting on Medical Guardian's behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, with a prerecorded message to the residential telephone line of the Plaintiff.

63. The foregoing acts and omissions of Medical Guardian and/or its affiliates, agents, and/or other persons or entities acting on Medical Guardian's behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, with a prerecorded message to a telephone number of the Plaintiff where he was charged for the call.

64. As a result of Medical Guardian's and/or its affiliates, agents, and/or other persons or entities acting on Medical Guardian's behalf's violations of the TCPA, 47 U.S.C. § 227, Plaintiff and members of the classes presumptively are entitled to an award of \$500 in damages for each and every call made.

65. Plaintiff and members of the classes are also entitled to and do seek injunctive relief prohibiting Medical Guardian and/or its affiliates, agents, and/or other persons or entities acting on Medical Guardian's behalf from making calls, except for emergency purposes, using an artificial or prerecorded voice in the future.

66. The Defendant's violations were negligent, willful, or knowing.

**Count Two:
Violation of the TCPA's Do Not Call provisions**

67. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

68. The foregoing acts and omissions of the Defendant constitute violations of the FCC's regulations implementing subsection 227(c) of the TCPA which prohibit anyone from making any call for telemarketing purposes to any residential or wireless telephone subscriber unless the caller has implemented the required minimum procedures for maintaining a list of persons who do not want to receive calls made by or on behalf of such person or entity. 47 C.F.R. 64.1200(d).

69. Medical Guardian failed to identify itself in the prerecorded message sent to the Plaintiff and the putative classes.

70. The Defendant's violations were willful and/or knowing.

Relief Sought

For himself and all class members, Plaintiff requests the following relief:

- A. Certification of the proposed classes;
- B. Appointment of Plaintiff as representative of the classes;
- C. Appointment of the undersigned counsel as counsel for the classes;

D. A declaration that Defendant and/or its affiliates, agents, and/or other related entities' actions complained of herein violate the TCPA;

E. An order enjoining Defendant and/or its affiliates, agents, and/or other persons or entities acting on Defendant's behalf from making calls, except for emergency purposes, to any number using an artificial or prerecorded voice in the future.

F. An award to Plaintiff and the classes of damages, as allowed by law;


G. Leave to amend this Complaint to conform to the evidence presented at trial; and

H. Orders granting such other and further relief as the Court deems necessary, just, and proper.

Plaintiff requests a jury trial as to all claims of the complaint so triable.

Dated: May 30, 2019

Plaintiff,
By Counsel,


/s/ Marc Davies
Marc Davies (81789)

1315 Walnut Street, Suite 320
Philadelphia, PA 19107
Telephone: 215.876.7636
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JS 44 (Rev 06/17)

CIVIL COVER SHEET

19-CV-2371

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS

ANDREW PERRONG, individually and on behalf of a class of all persons and entities similarly situated

(b) County of Residence of First Listed Plaintiff Montgomery County, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Marc Davies, 1315 Walnut Street, Suite 320, Philadelphia, PA 19107,
215 876 7636

DEFENDANTS

MEDICAL GUARDIAN LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus. <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

47 U.S.C. § 227

Brief description of cause

A putative class action brought pursuant to the Telephone Consumer Protection Act for automated telemarketing

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P.

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

/s/ Marc Davies

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

MAY 31 2019

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

19

2371

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 3551 Post Rd., Huntingdon Valley, PA 19006

Address of Defendant: 1500 Locust Street, Suite 4310, Philadelphia, PA 19102

Place of Accident, Incident or Transaction: Huntingdon Valley, PA

RELATED CASE, IF ANY:

Case Number _____ Judge _____ Date Terminated _____

Civil cases are deemed related when **Yes** is answered to any of the following questions

- | | | | |
|---|---|------------------------------|--|
| 1 | Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2 | Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3 | Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4 | Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE

5/31/2019Marc Davies
Attorney-at-Law / Pro Se Plaintiff

81789

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)**A. Federal Question Cases:**

- ☐ 1 Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2 FELA
- ☐ 3 Jones Act-Personal Injury
- ☐ 4 Antitrust
- ☐ 5 Patent
- ☐ 6 Labor-Management Relations
- ☐ 7 Civil Rights
- ☐ 8 Habeas Corpus
- ☒ 9 Securities Act(s) Cases
- ☐ 10 Social Security Review Cases
- ☒ 11 All other Federal Question Cases
(Please specify) Alleged violation of TCPA, 47 U.S.C. § 227

B. Diversity Jurisdiction Cases:

- ☐ 1 Insurance Contract and Other Contracts
- ☐ 2 Airplane Personal Injury
- ☐ 3 Assault, Defamation
- ☐ 4 Marine Personal Injury
- ☐ 5 Motor Vehicle Personal Injury
- ☐ 6 Other Personal Injury (Please specify) _____
- ☐ 7 Products Liability
- ☐ 8 Products Liability Asbestos
- ☐ 9 All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Marc Davies, counsel of record or pro se plaintiff, do hereby certify



Pursuant to Local Civil Rule 53.2, § 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs



Relief other than monetary damages is sought

DATE

5/31/19Marc Davies
Attorney-at-Law / Pro Se Plaintiff

81789

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

MAY 31 2019

AB

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Andrew Perrong, individually and on behalf of:

CIVIL ACTION

a class of all persons and entities similarly
situated, v.

19

2371

Medical Guardian LLC

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

Date

5/31/19

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